

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

WESTERN ENGINEERING, INC.,)
)
)
Plaintiff,) 4:05CV3239
)
)
v.)
)
PEAK ASPHALT, L.L.C.,) MEMORANDUM AND ORDER
)
)
Defendant.))
)

The parties have filed a stipulation for a continuance of trial in this matter, stating that the trial date, which was set by the court's order after a conference with counsel on October 16, 2006, falls in the parties' "busiest" season of road construction. Further, defendant's counsel states they do not have time for a six-day trial until March of 2008.

NECivR 6.1(a)(2) requires a showing of "good cause" for enlargements of time. That the trial date falls at an inconvenient time for the parties is not something that has arisen since the court's conference with counsel back in October. It should have been anticipated.

Further, there is no showing of due diligence in preparing the case for trial. The case was filed, according to the Notice of Removal, on August 17, 2005. It was at issue with the filing of the plaintiff's reply to the defendant's counterclaim on November 10, 2005. Following counsel's "meet and confer" conference, they filed a report of planning meeting on November 23, 2005 which estimated the case could be ready for trial in July (another "summer" month), 2006. The docket sheet reflects that since the initial scheduling order was issued November 28, 2005, the parties have served their initial

disclosures pursuant to Fed. R. Civ. P. 26(a)(1) and a total of five written discovery requests between them. No depositions have been taken, despite there having been two winters in the interim.

By the time the scheduled trial date arrives, the case will be two years old. The parties deserve to have their dispute heard and resolved.

IT THEREFORE HEREBY IS ORDERED,

The motion, filing 41, is denied.

DATED this 16th day of March, 2007.

BY THE COURT:

s/ *David L. Piester*

David L. Piester
United States Magistrate Judge